

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

2012 MAY 24 AM 10:22

CLERK *Adrell*  
SO. DIST. OF GA.

THOMAS W. SIKES,

Plaintiff,

v.

UNITED STATES OF AMERICA;  
UNITED STATES NAVY;  
UNITED STATES DEPARTMENT  
OF THE NAVY: JUDGE ADVOCATE  
GENERAL; AND DOES 1 – 10,

Defendants.

CV312-45

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
PURSUANT TO THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 522**

NOW COMES the Plaintiff, Thomas W. Sikes, and for his Complaint against Defendants, states as follows:

1. This is an action arising under a law of the United States, the Freedom of Information Act (hereinafter "FOIA"), and all lawful regulations which have been promulgated thereunder. *See*, 5 U.S.C. 552 *et seq.*
2. This Court possesses original jurisdiction over this action, pursuant to the following: 5 U.S.C. §552(a)(4)(B); 28 U.S.C. §1361 (action to compel an officer of the United States to perform his duty); the First Amendment petition clause and the Fifth Amendment due process clause in the Constitution of the United States of America.
3. Plaintiff resides in Laurens County, Georgia.
4. Defendants presently embrace the United States of America, the United States Navy, the United States Department of the Navy: Judge Advocate General, and the United States Naval Criminal Investigative Service.

## **I. FACTUAL ALLEGATIONS**

5. Plaintiff requested access to certain document(s) by submitting two proper and timely FOIA requests. The first request ["Request 1"], a copy of which is attached as Exhibit A, was submitted to the United States Navy, CNO/SECNAV FOIA Requester Service Center. The second request ["Request 2"], a copy of which is attached as Exhibit B to this Complaint, was submitted to the Naval Criminal Investigative Service. Both requests were submitted on or about August 26, 2011.
6. Plaintiff plans to use the documents in Requests 1 and 2 to help tell the life story of one of the Navy's most accomplished Admirals, the former Chief of Naval Operations, Admiral Jeremy Michael Boorda.

### ***FOIA Request 1***

7. The Plaintiff filed Request 1 dated August 26, 2011, with the FOIA Officer at the Chief of Naval Operations/ Secretary of the Navy's FOIA Requester Service Center in Washington, DC.
8. Request 1 sought ". . . [A] complete list of all invitees and attendees for the April 24, 1994 CNO change of command ceremony, including individuals, their spouses, and the invitees' guests." This change of command ceremony was held for the purpose of swearing in the incoming Chief of Naval Operations, ADM Jeremy Michael Boorda. As shown in Exhibit A, Request 1 stated that "the materials responsive to this request should be located among the files of the Office of the Chief of Naval Operations," which is located in the Pentagon.

9. The Plaintiff was sent an acknowledgement letter dated September 12, 2011, for Plaintiff's Request 1, including a Case File Number, from Ms. Robin Patterson, the Head of the Department of the Navy's PA/FOIA Policy Office. (Exhibit C).
10. Subsequently, the Plaintiff received a letter dated September 26, 2011, from Ms. Phyllis Shaw, a Navy Senior Public Affairs/FOIA Program Analyst, stating that the information Plaintiff sought "may be maintained by the Director, Naval History and Heritage Command, ... Washington Navy Yard. Therefore we have forwarded your request to that official..." (Exhibit D).
11. Plaintiff received a letter from the Naval History and Heritage Command (NHHC) dated October 18, 2011, which stated that the NHHC had been "unable to locate" the information Plaintiff sought, and indicating that this conclusion "may be appealed." (Exhibit E).
12. In order to facilitate the search for the materials in Request 1, Plaintiff appealed the conclusion of the October 18, 2011, letter in a FOIA appeal dated December 13, 2011. In his appeal Plaintiff clarified that he sought the guest list and any RSVP replies for the Change of Command Ceremony at which Admiral Jeremy Michael Boorda was sworn in as the Chief of Naval Operations. The Plaintiff stated that such information was expected to be in the appropriate volume of the Change of Command Books, which books were likely to be found in the Office of the Chief of Naval Operations ("the CNO's Office"). Plaintiff requested "that the Navy continue to search," beginning in that Office. (Exhibit F).
13. In response to his letter of December 13, 2011, Plaintiff received a letter dated January 23, 2012 from G.E. Lattin in the Office of the Judge Advocate General of the Navy. In

the second paragraph of that letter Mr. Lattin said "I grant your appeal." Two paragraphs below Mr. Lattin said "I am responsible for this denial of your appeal." That letter further indicated that, following a search in the Office of the CNO, information responsive to Request 1 had been found. In apparent reference to forthcoming substantial redaction, the letter stated that "CNO will process this information for release to you." (Exhibit G).

14. Subsequently, Ms. Robin Patterson, Head of the Navy's FOIA Policy Office, confirmed to Plaintiff through a letter dated February 17, 2012, that they had located a listing of the invitees that would satisfy Request 1. Nevertheless, Navy representatives redacted slightly more than half of that invitations list, claiming that the release of the names of people who did not hold public facing roles would be an unwarranted invasion of their personal privacy under 5 U.S.C. § 552(b)(6). (Exhibit H).

15. In total the CNO's Office redacted slightly more than half of the invitations list (1,001 out of 1,973 entries), but such redactions were wholly unnecessary and improper. The CNO's Office based its redactions on 5 U.S.C. § 552(b)(6), which provides for the exclusion of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." (Exhibit I).

16. In Plaintiff's second (i.e., final) appeal related to FOIA Request 1, an appeal dated February 25, 2012, Plaintiff noted that the Change of Command ceremony was a large event held at the U.S. Naval Academy at Annapolis. It involved issuance of 1,973 distinct invitations (as seen by counting all entries in Exhibit I), invitations encompassing slightly more than 3,900 prospective guests. Numerous reporters and photographers were expected to be in attendance, and did attend in their professional capacities. Such an

event was largely public, and it is highly unlikely that any attendee would have any reasonable expectation of privacy concerning his or her name. (Attendee addresses were not requested, and addresses did not appear on the list itself.) (Exhibit J and K).

17. Moreover, a third FOIA request dated February, 26, 2012, reveals that there were six (6) Naval Media Center video cameras and crews, four (4) Navy still photographers, three (3) former Naval officers available for interviews, and various public media video, photographic, and print journalists in attendance. (In fact, comparing Exhibit I with Exhibit L, it appears that the names of the three former officers at that event offered to the press in 1994 for interview were themselves redacted for privacy reasons in 2012.) Hence, reliance by the CNO's Office on the exemption at 5 U.S.C. § 552(b)(6) is incorrect. (Exhibit L).

18. Plaintiff received a letter dated March 7, 2012, from the Office of the Judge Advocate General of the Navy acknowledging receipt of Plaintiff's February 25, 2012, FOIA appeal. (Exhibit M).

19. That March 7 letter was followed by a March 19 letter from the Office of the Judge Advocate General of the Navy, which denied Plaintiff's second (i.e., final) appeal related to FOIA Request 1. In its denial, the Office of the Judge Advocate General stated that release of the redacted names of invitees to the Change of Command ceremony would constitute an invasion of privacy. (Exhibit N).

20. Plaintiff's final FOIA appeal for Request 1 was wrongfully denied. It would not be an invasion of privacy for the names of invitees attending a highly public military ceremony for one of the highest postings in the United States military to be released.

***FOIA Request 2***

21. In further support of his efforts to portray accurately the life of Admiral Jeremy Michael Boorda, Plaintiff had concurrently filed a second FOIA request on or about August 26, 2011, this one filed with NCIS for the purpose of learning more about the circumstances of Admiral Boorda's suicide. (Exhibit B)
22. Request 2 sought unredacted "access to 'Several memorandum notes, business cards, laminated cards containing telephone numbers, and a six page handwritten document which appear to be notes relating to official business,'" which were removed from the back seat of Admiral Boorda's car on March 16, 1996 by the NCIS. (The characterization of the notes as "relating to official business" is from the NCIS investigator's report, as seen on page 3 of Exhibit B.) Request 2 also sought the NCIS vehicle inventory of Admiral Boorda's official vehicle, if and to the extent that such might differ from the above. Immediately following his morning staff meetings at the Pentagon Admiral Boorda, traveling alone, drove that vehicle, which was the CNO's assigned Navy vehicle, to his residence in a separately guarded area within the Washington Navy Yard less than two hours before his suicide. As described in Exhibit B, the items in Request 2 include the notes he left in his car just after those staff meetings, when he went into the CNO's residence for the final time.
23. Despite (a) submission of Request 2 to NCIS dated August 26, 2011, (b) U.S. Postal Service evidence of prompt receipt by NCIS, (c) the statutory requirements of 5 U.S.C. §552(a)(7)(A) for agency acknowledgement and notification by the agency of a Case File Number, and (d) the requirement at 5 U.S.C. §552(a)(6)(A)(i and ii) for 20 working day "determination," Plaintiff was not formally notified of the tracking number or given a

written determination on Request 2 until the NCIS letter dated January 4, 2012 (a period of four months). (Exhibit O, P, Q, and R).

24. Plaintiff received a letter from NCIS dated January 4, 2012, which stated that the materials identified in Request 2 could not be provided because the materials sought were "seized in the course of an investigation," and were therefore "not agency records and as such cannot be processed under the Freedom of Information Act." (Exhibit O). Plaintiff appealed the January 4, 2012 NCIS initial denial letter with a letter of his own dated January 6, 2012. (Exhibit S).

25. Plaintiff received a letter dated February 9, 2012, from the Office of the Judge Advocate General denying Plaintiff's January 6, 2012, appeal. Once again, this time on a more formal level, the Navy denied Plaintiff's Request 2, claiming that the documents requested were not agency records, and therefore were not subject to release under FOIA. (Exhibit T).

26. Plaintiff's final FOIA appeal related to Request 2 was wrongfully denied. The documents sought in Request 2 were, by the NCIS investigator's own characterization, "notes relating to official business." (This is shown in the final page of Exhibit B.) Accordingly, they constitute "agency records" for the purposes of this FOIA request. Despite the NCIS contention in its January 4, 2012 denial letter, the NCIS seizure of the documents sought in Request 2 does not in any way affect the documents' classification as "agency records."

## **II. CAUSE OF ACTION**

27. Defendants have failed to produce the document(s) requested in both requests within the time limits prescribed by the FOIA, specifically 5 U.S.C. 552(a)(6), in whole or in part.

28. No request for an extension of the deadline to respond has ever been received from Defendants, nor has any such extension been granted.
29. Plaintiff has now exhausted his administrative remedies and is entitled, pursuant to law, to inspect and copy the requested documents.
30. Plaintiff is entitled by law to receive all applicable legal fees and costs in connection with this action as well as sanctions against Defendants.

**RELIEF REQUESTED**

Wherefore, Plaintiff respectfully requests that this Court:


- (1) Order Defendants to produce the requested document(s) to Plaintiff for copying and inspection;
- (2) Enjoin Defendants from improperly withholding the requested document(s);
- (3) Award Plaintiff his costs and attorneys' fees in this action, as provided by 5 U.S.C. §552(a)(4)(E);
- (4) Provide for expedition of the proceedings on this Complaint, as provided by 5 U.S.C. §552(a)(4)(C); and
- (5) Grant Plaintiff such other and further relief as this Court may deem just and proper.



STOKES ROBERTS & WAGNER, ALC

Dated: May 24, 2012

By:

A handwritten signature in black ink, appearing to be 'P. Fischer', written over a horizontal line.

Peter G. Fischer, Esq.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA

THOMAS W. SIKES, )  
)  
Plaintiff, )  
)  
v. )  
)  
UNITED STATES OF AMERICA; )  
UNITED STATES NAVY; )  
UNITED STATES DEPARTMENT )  
OF THE NAVY: JUDGE ADVOCATE )  
GENERAL; AND DOES 1 – 10, )  
)  
Defendants. )  
)

**CERTIFICATE OF SERVICE**

This is to certify that I have this date served a copy of the foregoing Notice for Trial upon the judge and opposing counsel listed below, by depositing the same in the U.S. Mail with adequate postage affixed thereto:

Edward J. Tarver  
United States Attorney's Office  
100 Bull Street, 2nd Floor  
Savannah, Georgia 31401

Eric Holder  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Department of the Navy  
Chief of Naval Operations  
2000 Navy Pentagon  
Washington, DC 20350

Department of the Navy  
Office of the Judge Advocate General  
1322 Patterson Avenue SE  
Suite 3000  
Washington Navy Yard, DC 20374

This 24th day of May, 2012.

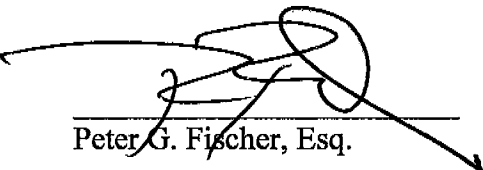
  
Peter G. Fischer, Esq.

Exhibit	Date	Pages	from/to	Contents
A	Aug. 26, 2011	1	Sikes letter to CNO/FOIA Office	Request 1: Guest List for ADM Boorda's 1994 Investiture as CNO. (It stated that requested material is likely in CNO's Office in Pentagon)
B	Aug. 26, 2011	3	Sikes letter to NCIS/Quantico FOIA Office	REQUEST 2: Six pages of ADM Boorda's handwritten notes, <i>et al</i> , as described therein. (Request was supplemented, per NCIS directions)
C	Sept. 12, 2011	1	CNO/FOIA Office letter to Sikes	Acknowledging Request 1 and assigning a Case File Number.
D	Sept. 26, 2011	1	CNO/FOIA Office letter to Sikes	re Request 1: Reporting that CNO/FOIA Office had instead forwarded this to Naval History and Heritage Command (NHHC).
E	Oct. 18, 2011	1	Naval History H. Com (NHHC) letter to Sikes	re Request 1: Adverse Determination letter from NHHC.
F	Dec. 13, 2011	3	Sikes letter to Navy/JAG Office	the First Appeal related to Request 1.
G	Jan. 23, 2012	1	Navy/JAG (Lattin) letter to Sikes	re Request 1: CNO's office <i>has found</i> responsive materials, but it will be processed by CNO before release.
H	Feb. 17, 2012	2	CNO/FOIA Office (Patterson) letter to Sikes	re Request 1: Enclosing almost half of Boorda Investiture's Guest List, and describing/characterizing the List's 50.7 % redactions.
I	Apr. 22, 1994/ Feb. 17, 2012	42	Guest List (that Navy sent to Sikes, along <i>with</i> Exhibit H)	Guest List for ADM Boorda's April 23, 1994 Investiture, with 50.7% redacted. (-- based on privacy issues alleged, per 5 U.S.C. §552(b)(6)).
J	Feb. 25, 2012	2	Sikes letter to Navy/JAG Office	re Request 1: Sikes' 2nd Appeal, asking for Un-redaction.
K	Feb. 2, 2012	1	CNO/FOIA Office (Petrillo) email to Sikes	email from veteran staff person at CNO/FOIA Office, saying (in 2 <sup>nd</sup> & 5 <sup>th</sup> paragraphs), that <i>she</i> felt the Guest List need not be redacted at all.
L	Feb. 26, 2012 and Feb. 27, 2012	6	Sikes to CNO/FOIA Office (1p) <u>and</u> CNO/FIOA Office's reply to Sikes (5 pps)	A THIRD FOIA request clarified press & photographers' ground rules at Investiture. Reply showed Internal & External Media Plans, offering <i>live press interviews</i> w/ people later redacted from Exhibit I.
M	Mar. 7, 2012	1	Navy/JAG(Callahan) to Sikes	Acknowledging receipt of 2 <sup>nd</sup> "Request 1 Appeal," shown in Exhibit J.
N	Mar. 19, 2012	1	Navy/JAG(Lattin) to Sikes	re Request 1: Navy denies appeal (Exhibit J) to release reacted names.
O	Dec. 21, 2011	1	Head of CNO/FOIA Office to NCIS/FOIA Office (Cusack)	Navy-to-Navy email: Requesting for Sikes a case number for REQUEST 2.
P	Dec. 28, 2011	1	CNO/FOIA Office (Petrillo) email to Sikes	Navy observation (to Sikes) that NCIS should provide a response to REQUEST 2 and, if an exemption is applicable, state <i>which</i> exemption.

Q	Jan. 4, 2012	1	NCIS/FOIA Office (Donart) letter to Sikes	re REQUEST 2: Navy's (initial) denial of request for handwritten notes, citing "items seized in investigation."
R	Jan. 26, 2012	1	CNO/FOIA Office (Petrillo) email to Sikes	email to Sikes from CNO's FOIA Office (at Washington Navy Yard) regarding (thus far) non-response by CNO's <i>main</i> office (in Pentagon).
S	Jan. 6, 2012	2	Sikes to Navy/JAG Office	Sikes' Appeal re: REQUEST 2.
T	Feb. 9, 2012	2	Navy/JAG(Schrock) to Sikes	re REQUEST 2: Navy denies appeal (Exhibit S).